

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

2

3 MICHAEL W. HILL, et al., : C.A. No. 05-160 Erie  
Plaintiff : C.A. No. 03-323 Erie  
4 : C.A. No. 03-355 Erie  
v. : C.A. No. 03-368 Erie  
5 : C.A. No. 04-011 Erie  
JOHN J. LAMANNA, et al., :  
6 Defendants :

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9 Video Conference Deposition of DEBORA FORSYTH,  
taken before and by Janis L. Ferguson, Notary  
Public in and for the Commonwealth of Pennsylvania,  
10 on Wednesday, December 6, 2006, commencing at  
11 10:08 a.m., at the offices of the United States  
Attorney, 17 South Park Avenue, Suite A330, Erie,  
Pennsylvania 16501.

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24 Reported by Janis L. Ferguson, RPR  
Ferguson & Holdnack Reporting, Inc.

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Page 2

1 INDEX

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3 TESTIMONY OF DEBORA FORSYTH

4 Direct examination by Mr. Lanzillo ..... 3

5 Cross-examination by Mr. Colville ..... 36

6 Redirect examination by Mr. Lanzillo ..... 37

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Page 3

1 DEBORA FORSYTH, first having  
2 been duly sworn, testified as follows:

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4 DIRECT EXAMINATION

5 BY MR. LANZILLO:

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7 Q. Ms. Forsyth, my name is Rich Lanzillo. I  
8 represent Michael Hill, Leslie Kelly, Kevin Siggers, Myron  
9 Ward, and Kenny Hill in the matters pending in the United  
10 States District Court for the Western District of  
11 Pennsylvania. We're conducting your deposition today  
12 relative to those cases, and we're doing so by a video  
13 hookup, a three-way video hookup. Mr. Colville and Doug are  
14 in a remote location. You, I understand, are down in  
15 Georgia, and I'm in Erie, Pennsylvania.

16 So a couple of things to keep in mind before we  
17 get started. There's a little bit of a delay between the  
18 time that I finish speaking and the time you'll hear me, and  
19 I think that delay goes all the way around to Mr. Goldring's  
20 hookup, Mr. Colville's hookup as well. So you may want to  
21 pause for a moment before you start to answer a question to  
22 make sure you got the whole question.

23 If at any time during your deposition you do not  
24 hear me clearly, just let me know, and I'd be happy to  
25 repeat or rephrase my question for you. Also, even if you

Page 4

1 do hear me clearly, if you don't understand the question,  
2 let me know that, and I'll be happy to rephrase it for you.  
3 I'm not here to trick you. I simply want to get some  
4 information relative to this -- to these cases.

5 And with those instructions, let me ask you,  
6 first, to please state your full name and your professional  
7 address.

8 A. Debora Ann Forsyth. I work at FCI Jesup. That's  
9 2600 South 301 Street, Jesup, Georgia.

10 Q. And how long have you been in Jesup, Georgia?

11 A. Since June 2003.

12 Q. How are you presently employed?

13 A. I'm full-time.

14 Q. And your position?

15 A. Associate warden of industries and education.

16 Q. When you gave your original response, there was a  
17 little crackling or static in the transmission. What,  
18 precisely, is the name of the Federal Correctional  
19 Institution where you are presently located?

20 A. FCI Jesup.

21 Q. Jesup.

22 A. J-E-S-U-P.

23 Q. Where were you employed prior to FCI Jesup?

24 A. FCI McKean.

25 Q. How long were you employed at FCI McKean?

Page 5

1 A. From July 1989 to June 2003.  
 2 Q. Why is it that you transferred -- I assume it was  
 3 a transfer from FCI McKean to FCI Jesup. Was it a  
 4 promotion?  
 5 A. Yes, sir.  
 6 Q. What was your title while you were employed at FCI  
 7 McKean?  
 8 A. I left there as the superintendent of industries.  
 9 Q. How long did you occupy that position?  
 10 A. About three and a half years. I believe in  
 11 November of 1999 I got that position.  
 12 Q. What was your position prior to November of 1999?  
 13 A. I was the factory manager at FCI McKean.  
 14 Q. And how long were you factory manager at FCI  
 15 McKean?  
 16 A. I really don't remember. It was probably about  
 17 two years.  
 18 Q. And when you referred to being factory manager, I  
 19 assume we're talking about what is commonly known as the  
 20 UNICOR facility at FCI McKean?  
 21 A. Yes.  
 22 Q. All right. Was there any period of time between  
 23 1989, when you started at FCI McKean, and June of 2003 when  
 24 you were not employed in connection with the UNICOR  
 25 facility?

Page 6

1 A. Yes, sir. It was about a year or a year and two  
 2 months, I was employed as a contract specialist in the  
 3 institution business office.  
 4 Q. Was that early in your tenure at FCI McKean, or  
 5 was that middle, late?  
 6 A. It was fairly early. Like '91, '92.  
 7 Q. Okay. And what were your job responsibilities  
 8 while you occupied the position of superintendent of  
 9 industries at FCI McKean?  
 10 A. I was responsible for the supervision of the total  
 11 operation of the factory.  
 12 Q. Who was your --  
 13 A. In addition to --  
 14 Q. Go ahead. I apologize.  
 15 A. In addition, I was responsible to advise the  
 16 warden of day-to-day activities. And he is who I answered  
 17 to.  
 18 Q. Okay. That was my next question. Was the warden  
 19 your immediate supervisor?  
 20 A. Yes, sir.  
 21 Q. And that's Warden Lamanna?  
 22 A. Yes, sir.  
 23 Q. Did you yourself supervise employees?  
 24 A. Yes.  
 25 Q. Approximately how many?

Page 7

1 A. I directly supervised the managers, which if we  
 2 include education, I believe were four.  
 3 Q. And, of course, my questions are still focusing on  
 4 when you were acting as superintendent of industries. Can  
 5 you tell me, do you recall the names of the supervisors who  
 6 you -- or the managers who you supervised as the  
 7 superintendent?  
 8 A. Yes. Marty Sapko. He was the factory manager.  
 9 Tim Houlihan was the business manager. Michael Hayes. He  
 10 was the quality assurance manager. Beth Fantasky, who was  
 11 the supervisor of education.  
 12 Q. Ms. Forsyth, briefly, what is your educational  
 13 background?  
 14 A. High school education.  
 15 Q. When did you graduate from high school?  
 16 A. 1974.  
 17 Q. Have you had any formal education or training  
 18 after high school graduation?  
 19 A. With the Bureau of Prisons; the training that I  
 20 received on the job and then training that they give for  
 21 various programs.  
 22 Q. That training, was it all provided in-house, for  
 23 lack of a better term?  
 24 A. It was through the Bureau of Prisons, yes, sir.  
 25 Q. In other words, the Bureau of Prisons did not send

Page 8

1 you to a program or seminar outside of the prison system  
 2 itself. Is that correct?  
 3 A. Best that I can recollect, yeah, that's correct.  
 4 Q. And did they bring in anyone from outside the  
 5 prison system to train you, or was it done by existing staff  
 6 members?  
 7 A. They had brought in various times people from the  
 8 outside to teach leadership training; teamwork approach.  
 9 That's all I received, I believe, from the outside. The  
 10 rest was from the BOP.  
 11 Q. So am I correct, then, you were not provided with  
 12 any outside training in areas of occupational health or  
 13 safety?  
 14 A. Not specifically, no.  
 15 Q. Did you receive any such training generally?  
 16 A. During annual refresher training, the safety  
 17 department would give various training, but those were  
 18 in-house, not outside.  
 19 Q. Okay. Did you have a written job description as  
 20 the superintendent of industries at UNICOR?  
 21 A. Yes.  
 22 Q. Did that remain the same throughout the time that  
 23 you had that position, that job description?  
 24 A. To my knowledge, yes.  
 25 Q. While you were employed as superintendent of

2 (Pages 5 to 8)

<p style="text-align: right;">Page 9</p> <p>1 industries at UNICOR, did the facility make anything other 2 than furniture? 3 A. No. 4 Q. Do you know whether that facility is still 5 operating -- well, let me stop there -- operating generally? 6 A. Yes. 7 Q. And do you know whether it's still making 8 furniture? 9 A. It is not making furniture. 10 Q. What are they making now? Plastic products? 11 A. Yes, sir. 12 Q. Do you know why the facility changed from a 13 furniture manufacturing facility to a plastic products 14 facility? 15 A. Purely economics, I'm sure. Things were moved to 16 the Coleman plant. 17 Q. Where is the Coleman plant? 18 A. Leesburg, Florida. 19 Q. Was there -- 20 A. I'm sorry, Lees County. 21 Q. Lees County, Florida? 22 A. Yes, uh-huh. I believe that's the name of it. 23 Q. Was there a furniture manufacturing facility in 24 Lees County, Florida at the same time that one was being 25 operated at FCI McKean?</p>	<p style="text-align: right;">Page 11</p> <p>1 frame? 2 A. Two. 3 Q. And at any given time during either shift, 4 approximately how many inmates would be engaged in 5 activities, employment, at the UNICOR facility? 6 A. If memory serves, during the day we were close to 7 200. It was probably 160 to 200, depending on the workload. 8 At night, we tried to keep it around 100 or less. 9 Q. And of those employees, approximately how many 10 would be engaged in the cutting or cutting activities 11 involving Micore board? 12 A. I would be guessing, but very few. But I would be 13 guessing, so I'm not sure. I would think less than 10. 14 Q. The employees engaged in cutting Micore board, 15 would they be in a discreet area of the facility? In other 16 words, separate from the other employees? 17 A. No. 18 Q. So if I'm following correctly, then, this was one 19 large shop floor, and one area would be a cutting area? Or 20 would they be spread out throughout the facility? 21 A. It is one -- one large shop, and cutting areas, 22 depending on the machine, could go throughout the area too. 23 Q. Okay. 24 A. I'm not -- I'm not an expert on where everything 25 was laid out, but just from me walking on the floor, there</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes. Part of that time. 2 Q. Do you know how long there's been a furniture 3 manufacturing facility in Lees County, Florida? 4 A. No, I -- I don't recall. I remember when they 5 opened up the facility down there and they started right 6 away doing various furniture products. But as to the exact 7 date, I don't know. And it's -- Coleman is the name of the 8 facility, and it is Leesburg, Florida where it is. I 9 misspoke. 10 Q. Okay. When did the UNICOR facility at FCI McKean 11 first open? 12 A. I don't know. Late '89, early '90. 13 Q. Was it in operation when you first arrived at your 14 initial position at FCI McKean? 15 A. We were setting things up. But, no, it wasn't in 16 operation yet. 17 Q. Were you involved in the design or layout of any 18 aspect of the facility? 19 A. No, sir. 20 Q. During the period of time that you were 21 superintendent of industries, what were the hours of 22 operation of the UNICOR facility? 23 A. The majority of the time was 7:30 -- or 7:10 until 24 11:00 at night. 25 Q. And how many shifts were operated during that time</p>	<p style="text-align: right;">Page 12</p> <p>1 were different areas of the factory where things were being 2 cut. So not just one area. 3 Q. And how often were you actually on the shop floor? 4 A. At least daily. Sometimes twice a day. 5 Q. And at the times when you would be present on the 6 shop floor, approximately how much time would you spend 7 there? 8 A. Well, it depended on really what I was doing down 9 there. But just my daily walks would sometime take about a 10 half hour. If we were checking out a new product, I would 11 assist with that, and sometimes a bit more. But a normal 12 daily walk was a half hour. 13 Q. And that walk, would that encompass the entire 14 shop floor? 15 A. Yes, sir. 16 Q. Did you have an office? 17 A. Yes, sir. 18 Q. And where was that located? 19 A. Upstairs, overlooking the factory floor. 20 Q. So you could actually observe what was going on 21 from your office? 22 A. Yes. 23 Q. We talked a few moments ago about whether you 24 received any outside training at the UNICOR facility or 25 whether anyone from the outside was brought in, and you had</p>

Page 13

1 addressed those questions. Let me now ask you what, if any,  
2 in-house training was provided to you regarding health and  
3 safety.

4 A. To me, I think it was just the yearly annual  
5 training that we received from the safety department  
6 in-house.

7 Q. Okay. And when you say "annual training", was  
8 there a session once a year?

9 A. Yes. For all staff.

10 Q. And when you say "all staff", what do you mean?

11 A. This particular training that I'm talking about is  
12 for all staff that -- employees that work at FCI McKean.

13 Q. Would that include the regular staff employees  
14 alone, or would it also include the inmate employees?

15 A. Just staff alone.

16 Q. Did that annual training occur at a particular  
17 time during the year?

18 A. Yes.

19 Q. When was that?

20 A. My guess, it's the first part of the year. I  
21 think January, February. I could be mistaken, because  
22 that's when we do it here. I'm not positive.

23 Q. And you mentioned the -- was it the safety office?  
24 Is that the name of the --

25 A. Yes.

Page 14

1 Q. Okay. And who, in particular, provided the  
2 training?

3 A. Steve Housler or someone in his staff.

4 Q. And how long was the annual training?

5 A. This particular class, I believe, lasted two  
6 hours.

7 Q. So annually there would be safety training  
8 provided by Steve Housler's office, and it would last  
9 approximately two hours? Is that correct?

10 A. Yes.

11 Q. Other than the two-hour training sessions that  
12 occurred on an annual basis, did you receive any other  
13 training regarding health and safety?

14 A. Not from an outside source and not from BOP.  
15 Other than program statements that I was to be familiar  
16 with.

17 Q. And what are program --

18 A. And that was --

19 Q. What are program statements?

20 A. Those are policy and procedures that are in place  
21 that -- for the factory.

22 Q. Are those maintained in a central location?

23 A. Yes.

24 Q. How often would you receive program statements?

25 A. I'm not sure. Normal program statements last for

Page 15

1 a year to two years, and then they are updated.

2 Q. Would the program statements ever be specific  
3 enough to address, for example, use or working with Micore  
4 board?

5 A. No, sir.

6 Q. These are more general guidelines and policies?  
7 Is that correct?

8 A. (Witness nods head.) Yes, sir.

9 Q. Could you tell me your understanding regarding how  
10 the ventilation system worked in the area of the panel saws  
11 and other saws in use at the UNICOR facility during the  
12 period of time that you were superintendent of industries.

13 A. Yes, sir. Each -- each machine had a tube that  
14 come down, and it actually would suck up any of the dust and  
15 debris for the machine so that the factory wasn't polluted  
16 with any of the dust. This would go through the  
17 air-handling system and go to rest outside in big silos.

18 This air-handling system was so strong that on more than a  
19 couple occasions we had screwdrivers and that kind of thing  
20 get sucked up in them. So we had to look for tools then.

21 Q. Were the machines tied into a central air-handling  
22 system?

23 A. Not to my knowledge, but I'm not an expert. I  
24 just knew how they sucked everything outside.

25 Q. And who was responsible for maintaining the

Page 16

1 ventilation system and the air-handling system?

2 A. Michael Salerno. He was their maintenance  
3 supervisor.

4 Q. Was he specifically assigned to UNICOR, or was he  
5 an institutional maintenance person?

6 A. No, he was specifically assigned to UNICOR.

7 Q. Are you aware of any instances when the  
8 ventilation system or the air-handling system malfunctioned?  
9 A. There -- no, I'm really not. I was trying to  
10 think if there would be anything that would be cause to  
11 malfunction, but, no. I don't recall.

12 Q. Did you ever receive or become aware of any  
13 complaints by any inmates or staff employees regarding  
14 respiratory problems associated with the handling of Micore  
15 board?

16 A. No one made me specifically aware of it. Later I  
17 heard from other staff -- Mr. Sapko, I believe, in  
18 particular, and Mr. Houlihan -- that was telling me that  
19 inmates were complaining. Or that they had filed BP-9's or  
20 something. But that was in the interim of me coming here,  
21 so I'm --

22 Q. During the entire time that you were  
23 superintendent, do I understand your testimony correctly  
24 that during that entire time you were a superintendent, that  
25 no inmate or staff employee brought to you any complaints

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 regarding respiratory problems associated with the use of 2 Micore board?</p> <p>3 A. No. To the best of my knowledge, no.</p> <p>4 Q. Are you aware of any staff employees submitting 5 disability, Workers' Comp., or any other type of medical 6 disability claim related to respiratory problems?</p> <p>7 A. Disability claims, yes, on staff. I'm not 8 positive if it was respiratory. It might have been. I know 9 he was having issues, but I'm not positive. But I do know 10 one staff had claims. And I was thinking it was Mr. 11 Bevevino.</p> <p>12 Q. What was that individual's name?</p> <p>13 A. Robin Bevevino.</p> <p>14 Q. And Robin Bevevino was a supervisor or a manager? 15 Is that correct?</p> <p>16 A. Yes. He was a foreman on the -- with the inmates.</p> <p>17 Q. Do you think that Mr. Bevevino's problems included 18 respiratory problems?</p> <p>19 A. I know he was -- he was sick quite a bit, yes, 20 with respiratory problems.</p> <p>21 Q. When did you first become aware of Mr. Bevevino's 22 respiratory problems?</p> <p>23 A. I -- I don't remember. I know he was out quite a 24 bit, and there is a -- he was out quite a bit for various 25 things. He had poison ivy that lasted for a long, long</p>	<p style="text-align: right;">Page 19</p> <p>1 A. If not everything there, they -- they had various 2 topics that they were to talk to the inmates about. So a 3 lot of that was self-taught. There were supplies that they 4 were given, videotapes they were to show. They would 5 educate the inmates with materials they had. Each month 6 they would educate them on something different, and I don't 7 know what all those things were.</p> <p>8 Q. Were any Material Safety Data Sheets maintained at 9 the UNICOR facility?</p> <p>10 A. Yes.</p> <p>11 Q. Who was responsible for maintaining the MSDS?</p> <p>12 A. I'm not positive. They -- I believe the safety -- 13 or the maintenance foremen took care of those. They were 14 located a couple different places on the factory floor.</p> <p>15 Q. When you say they were located at a couple of 16 different places on the factory floor, are you indicating 17 that they were moved from time to time or that there were 18 multiple copies?</p> <p>19 A. There were multiple copies.</p> <p>20 Q. You don't know who was responsible for maintaining 21 those for sure?</p> <p>22 A. I can't -- I can't remember. I do believe that -- 23 well, I do know that every chemical that we brought into the 24 institution had to go through the safety department, and 25 Mr. Snyder was the one that was responsible for that. But</p>
<p style="text-align: right;">Page 18</p> <p>1 time. And then he had pneumonia and some colds. And then 2 he had problems with his back. I'm not sure when all of 3 this took place and exactly when I became aware of it. I 4 wasn't his direct supervisor. I believe Mr. English or 5 Mr. Sapko were his direct supervisor.</p> <p>6 Q. Do you know what area of the UNICOR facility he 7 worked in?</p> <p>8 A. He worked on the factory floor. The foremen were 9 rotated almost yearly, so I'm not real sure where 10 Mr. Bevevino was.</p> <p>11 Q. Did the inmate employees receive any training 12 regarding the use of Micore board?</p> <p>13 A. I don't know specifically if -- Micore board, but 14 they received training on safety issues, you know, almost 15 monthly, as far as how to pick boards up and how not to -- 16 (Brief interruption in proceedings.) 17 (Discussion held off the record.)</p> <p>18 Q. All right, let's resume. The training, safety 19 training provided to the inmates, who was responsible for 20 providing that, Ms. Forsyth?</p> <p>21 A. Each of the foremen were responsible for the 22 safety talks.</p> <p>23 Q. And the foremen, am I correct that they would have 24 received their training during the annual training sessions 25 that you described earlier?</p>	<p style="text-align: right;">Page 20</p> <p>1 the maintenance department, I think, had a hand in it, but 2 I'm not positive.</p> <p>3 Q. Where on the shop floor were the Material Safety 4 Data Sheets maintained?</p> <p>5 A. I remember one right as you come in near the 6 factory office, which is on the floor. And then I believe 7 there was one station that was in the back close to the 8 packing area.</p> <p>9 Q. Are you aware of any other locations?</p> <p>10 A. I can't remember.</p> <p>11 Q. Did you ever personally consult the Material 12 Safety Data Sheets?</p> <p>13 A. Yes.</p> <p>14 Q. Who had access to the Material Safety Data Sheets?</p> <p>15 A. Everybody.</p> <p>16 Q. Was there a Material Safety Data Sheet that 17 addressed Micore board or silica dust?</p> <p>18 A. The Micore board, yes. Even particle board. I 19 think everything came with an MSDS on it.</p> <p>20 Q. When did you become aware that there was an MSDS 21 dealing with Micore board?</p> <p>22 A. I don't know. We had ACA inspections where we had 23 to make sure everything was in there. I'm not positive. It 24 could have -- it could have been the first time that OSHA 25 came to the factory.</p>

5 (Pages 17 to 20)



<p style="text-align: right;">Page 21</p> <p>1 Q. And do you recall when the first OSHA visit was?</p> <p>2 A. No, I don't.</p> <p>3 Q. Do you know what prompted that visit?</p> <p>4 A. A letter, I think. I don't know for sure.</p> <p>5 Q. Do you recall the subject of the complaint that</p> <p>6 prompted the OSHA visit?</p> <p>7 A. (No response.)</p> <p>8 Q. Was it Micore board and dust?</p> <p>9 A. It was the air -- it was the air quality, if I</p> <p>10 remember correctly.</p> <p>11 Q. And as part of your receiving notice of the</p> <p>12 complaint to OSHA and the OSHA visit itself, did you at the</p> <p>13 same time become aware that inmates were complaining about</p> <p>14 respiratory problems?</p> <p>15 A. No, I don't know if I think it was inmates or not.</p> <p>16 No. This complaining about the air quality, specific inmate</p> <p>17 ailments, I don't remember. I knew there was an issue,</p> <p>18 which was why we -- they -- OSHA said that there was</p> <p>19 complaints about the air quality, but I really didn't know</p> <p>20 if it was inmate or staff that was making a complaint, and I</p> <p>21 didn't know any specifics.</p> <p>22 Q. I just want to make sure that I'm following your</p> <p>23 testimony correctly here. I mean, when you say you became</p> <p>24 aware that there were air quality complaints, did you not</p> <p>25 also understand that in connection with those air quality</p>	<p style="text-align: right;">Page 23</p> <p>1 they were testing different areas of the factory and</p> <p>2 outside. But I'm not positive whether it was the gentleman</p> <p>3 from OSHA or Mr. Salerno. But the OSHA gentleman was</p> <p>4 present at the time.</p> <p>5 Q. Did you participate in the OSHA inspection and any</p> <p>6 testing in connection with that inspection?</p> <p>7 A. No. No.</p> <p>8 Q. Do you know when they conducted the inspection</p> <p>9 relative to the operation of the facility?</p> <p>10 A. I believe it was -- the test was like an</p> <p>11 eight-hour test, I'm thinking. I know one of the tests that</p> <p>12 we had was an eight-hour test. And I'm thinking that's what</p> <p>13 they did. Beginning from, you know, the 7:30 to 4:00 shift,</p> <p>14 which is when we have most inmates working.</p> <p>15 Q. Let me ask you this: Is it necessary for the</p> <p>16 inmates utilizing table saws and other saws periodically to</p> <p>17 clean up the saw itself; clean up the dust on the machine or</p> <p>18 in or around the machine?</p> <p>19 A. I don't know that.</p> <p>20 Q. Did you ever observe that?</p> <p>21 A. Observe them, no. I observed them using the air</p> <p>22 gun, spraying themselves off for whatever reason, but I</p> <p>23 don't -- that's all I remember seeing.</p> <p>24 Q. When you referred to the air gun, you're talking</p> <p>25 about some sort of pneumatic or compressed air device?</p>
<p style="text-align: right;">Page 22</p> <p>1 complaints, that people were raising concerns about</p> <p>2 respiratory health and ailments?</p> <p>3 A. Yes. That -- that was all part of why they were</p> <p>4 concerned about the air quality. But specific inmates and</p> <p>5 specific people, I didn't have that issue. When -- when</p> <p>6 OSHA made their -- made it known that they were coming in to</p> <p>7 check it, is that they received complaints about the air</p> <p>8 quality, and that's when we started asking questions and</p> <p>9 things. But, specifically, I didn't know specific people,</p> <p>10 that I remember. I don't remember that.</p> <p>11 Q. After the OSHA visit, what did you do regarding</p> <p>12 the air quality issues that were raised?</p> <p>13 A. I don't recall doing anything. There was no issue</p> <p>14 with the air quality concerning the OSHA report. Everything</p> <p>15 was fine. At one point the gentleman that was there said</p> <p>16 that the air quality inside the factory was better than that</p> <p>17 outside the factory. So there was no need for me to really</p> <p>18 react. And at this time is when I was doing my</p> <p>19 house-hunting trip here and then moving here, so I'm not</p> <p>20 sure what happened after that. But I personally don't think</p> <p>21 there was a need to do anything.</p> <p>22 Q. Who made that statement to you, that the air</p> <p>23 quality inside the facility was better than that outside?</p> <p>24 A. I can't remember if it was the OSHA gentleman or</p> <p>25 Mr. Salerno, but they had one of those readers that -- that</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes.</p> <p>2 Q. All right. And you observed them, what, using the</p> <p>3 air gun to blow dust off themselves or clothing? Is that</p> <p>4 what you're referring to?</p> <p>5 A. Yes. They were blowing something. I would</p> <p>6 imagine it was dust that was there.</p> <p>7 Q. Okay. Were you able to observe dust being blown</p> <p>8 off of their clothing or themselves?</p> <p>9 A. No. But there were times that there was dust on</p> <p>10 the floor, and they would have to sweep up. And I'm not</p> <p>11 sure where that was or why. But I do remember seeing that.</p> <p>12 But as far as dust coming off themselves, no.</p> <p>13 Q. But you did observe them using the air gun to blow</p> <p>14 what you assumed was dust off of their clothes.</p> <p>15 A. Yes.</p> <p>16 Q. And how often did you see that?</p> <p>17 A. I -- probably once a day. I don't know. When</p> <p>18 they were getting ready to leave or something.</p> <p>19 Q. Okay. So as part of their routine, then, when</p> <p>20 they were leaving, they would be blowing -- blowing dust off</p> <p>21 their clothing; is that right, at the end of the shift?</p> <p>22 MR. COLVILLE: I'll object to the form, but you</p> <p>23 can answer.</p> <p>24 A. Not -- I don't want to imply that everybody did</p> <p>25 that. On occasion I would see an inmate doing that. That</p>

6 (Pages 21 to 24)

Page 25

1 being said, they were told not to do that, because it was  
2 dangerous. So -- but you asked if I had ever seen it, and I  
3 had. Probably once a day one of them were doing it. And it  
4 didn't mean that all of them were.

5 Q. Who told you that was dangerous?

6 A. Mr. Salerno, because of the air pressure.

7 Q. Okay. So the force of the air? Is that what the  
8 danger was?

9 A. I would assume. I know enough to be dangerous  
10 here, so I'm not going to say. I would assume that was it.

11 Q. Okay. That's what you believed. Is that what  
12 you --

13 A. I -- yes. Yes.

14 Q. Do you know whether the inmates ever used the air  
15 gun to blow dust from the saws themselves?

16 A. I never witnessed that.

17 Q. Do you know whether they did that? Did you learn  
18 that through any other --

19 A. Not specifically, no.

20 Q. Did you believe they were doing that?

21 A. The concern that I remember was them using the air  
22 gun on themselves, because it could hurt the eyes or  
23 something. I don't remember any great talk about the air  
24 gun with anything else. So I don't know. I just never  
25 thought about it, I guess.

Page 26

1 Q. Were respirators made available to any of the  
2 employees at the UNICOR facility while you were  
3 superintendent?

4 A. To my knowledge, no. Dust masks were available,  
5 but not respirators, to my knowledge.

6 Q. What type of dust mask was provided?

7 A. I don't know. They were just the white masks that  
8 you put over your face.

9 Q. Did you ever see inmates wearing the dust masks?

10 A. Yes.

11 Q. Anyone in particular? And by anyone, I don't  
12 necessarily mean names, but I'm more interested in the  
13 activities they were performing with the dust masks.

14 A. I couldn't -- I couldn't tell you specifically  
15 where. It was rare to see it.

16 Q. To your knowledge, were the inmates ever  
17 instructed to wear dust masks?

18 A. No.

19 Q. Are you aware of any Material Safety Data Sheets  
20 or other safety documents that either required or suggested  
21 the wearing of respirators or dust masks when using any  
22 particular material within UNICOR?

23 A. Possibly if it was in an enclosed area without an  
24 air-handler system. I would think even particle board would  
25 require it. But seeing that we were in a huge room with a

Page 27

1 great airing system that I was told was almost double the  
2 capacity that we needed, it wasn't necessary, and OSHA  
3 agreed with that, as best as I can remember.

4 Q. So just so I understand your testimony, then, it's  
5 your testimony that -- and even here sitting here today,  
6 based on what you know today, that it was unnecessary for  
7 inmates to wear respirators or even dust masks when  
8 performing tasks at the UNICOR facility. Is that correct?

9 A. That's my belief, yes. Yes.

10 Q. And do you recall the identity of any person in  
11 particular who told you that?

12 A. I can't recall specifically, but I do remember  
13 reading that. And then I would ask about our air-handling  
14 system and the space, and I think Mr. Salerno and  
15 Mr. Housler is who I talked to at length about that when we  
16 knew OSHA was coming in. But, specifically, that's just my  
17 understanding.

18 Q. Did you ask anyone at OSHA about that  
19 understanding; whether your understanding was correct?

20 A. I asked OSHA about the facility, about the  
21 cleanliness, about potential harm, and they -- their -- even  
22 that day of walking around, he said it was the cleanest  
23 place that he had seen, and there shouldn't be any concern  
24 with anything. Specifically, no. But I just -- it was  
25 concerning the air in the factory itself.

Page 28

1 Q. What about, though, that -- what about inmates who  
2 were directly using saws to cut Micore board, and rather  
3 than just breathing the ambient air in the facility, but who  
4 were actually in proximity to the operations point of the  
5 saws? Did you discuss those people with anyone at OSHA?

6 A. I don't think I did, no.

7 Q. Did you have an understanding regarding any  
8 differences in exposure levels that might occur between an  
9 operator of a machine working with Micore board,  
10 particularly a saw, as opposed to someone just breathing the  
11 ambient air -- the air generally in the facility?

12 A. No. I don't have that knowledge. I do -- do know  
13 that when they did the air quality testing, those machines  
14 they would set up would be near the various machines. And  
15 when they tell me things were fine, I -- I was down there  
16 walking, I was by those machines and watching them. I  
17 didn't notice any difference. But I don't have that  
18 specific knowledge, other than things I observed.

19 Q. Other than your daily walk through the facility,  
20 which I understand encompassed the whole facility and lasted  
21 approximately a half an hour, would you spend any  
22 significant periods of time on the shop floor?

23 A. That's where I was the half hour, was on the shop  
24 floor, going throughout each machine, talking to inmates,  
25 seeing the product. On occasion I would be asked by Mr.

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 Hayes to come down and look at something he thought maybe</p> <p>2 wasn't quite right, and that would involve me watching them</p> <p>3 cut something and looking at it. So, yes, I was on the shop</p> <p>4 floor quite a bit.</p> <p>5 Q. Did you ever observe employees actually engaged in</p> <p>6 the process of sawing boards, Micore boards specifically?</p> <p>7 A. On the routing machines, yes.</p> <p>8 Q. How many boards would the inmates cut at a time on</p> <p>9 a panel saw, for example?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you have any knowledge regarding anyone</p> <p>12 altering any Material Safety Data Sheets relating to the use</p> <p>13 of Micore board?</p> <p>14 A. No.</p> <p>15 Q. Specifically, are you -- do you have any knowledge</p> <p>16 of anyone striking out the word "respirator" and inserting</p> <p>17 the word "mask" regarding the use of Micore board?</p> <p>18 A. No.</p> <p>19 Q. Have you ever heard that -- from anyone that that</p> <p>20 occurred?</p> <p>21 A. What I recall is in the declaration stating that I</p> <p>22 never altered an MSDS sheet. I have never seen the supposed</p> <p>23 MSDS sheet that was altered. So that, to my knowledge, is</p> <p>24 what I remember then, looking back.</p> <p>25 Q. Did you ever become aware of any complaints from</p>	<p style="text-align: right;">Page 31</p> <p>1 us to investigate it and give a report.</p> <p>2 Q. Other than that testing and any testing performed</p> <p>3 by OSHA, are you aware of any other air tests performed at</p> <p>4 the UNICOR facility?</p> <p>5 A. I believe that safety department had a little</p> <p>6 machine that they could test. I want to say they did. I</p> <p>7 know they do it here, so.</p> <p>8 Q. What --</p> <p>9 A. It's part of that policy.</p> <p>10 Q. The machine, can you -- can you be more specific,</p> <p>11 what you're talking about?</p> <p>12 A. No.</p> <p>13 Q. You have such a device at your current facility?</p> <p>14 A. Pardon me?</p> <p>15 Q. Do you have such a testing device at your current</p> <p>16 facility?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ever see a similar device at FCI McKean?</p> <p>19 A. I can't remember. That's why now I'm hesitating.</p> <p>20 You know, I'm over 50, so I don't know if I'm combining the</p> <p>21 factory in two plants or not. So the air quality in any</p> <p>22 factory is real important, but I'm not -- I guess I should</p> <p>23 just back up on that one, and Mr. Housler can answer that.</p> <p>24 I'm not real sure now.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 30</p> <p>1 either inmate employees or staff employees regarding skin</p> <p>2 irritations or other skin conditions experienced by those</p> <p>3 people while -- or while working in association with Micore</p> <p>4 board?</p> <p>5 A. No.</p> <p>6 Q. Other than the air testing that was undertaken in</p> <p>7 connection with the OSHA inspection, are you aware of any</p> <p>8 other air test performed in the UNICOR facility?</p> <p>9 A. Yes. We had a private company come in and do a</p> <p>10 testing prior to OSHA coming in and doing their testing.</p> <p>11 Q. And when was that?</p> <p>12 A. I -- I don't remember specifically.</p> <p>13 Q. Do you recall the name of the company who</p> <p>14 performed the test?</p> <p>15 A. No.</p> <p>16 Q. Recognizing that you can't recall precisely when</p> <p>17 that occurred, do you recall whether it was soon before the</p> <p>18 OSHA testing?</p> <p>19 A. Not too before. I'm thinking there was quite a</p> <p>20 few months, if not a year before, but I'm guessing. But</p> <p>21 memory -- memory tells me that it was before, so. Long</p> <p>22 before, but I'm not positive.</p> <p>23 Q. And why was that testing performed?</p> <p>24 A. It was in response to a letter from OSHA stating</p> <p>25 that they had received a written complaint, and they asked</p>	<p style="text-align: right;">Page 32</p> <p>1 A. But I just never had any concerns with the air</p> <p>2 quality in that factory. Even when the complaints were</p> <p>3 issued, we had the testing done immediately, and I -- I just</p> <p>4 thought this was the -- the -- you know, I was amazed,</p> <p>5 because I know I never even had problems, and we were there</p> <p>6 a lot on the floor.</p> <p>7 Q. Well, just backing up for a second to the device</p> <p>8 for testing air quality.</p> <p>9 A. Yes.</p> <p>10 Q. If I understand your testimony correctly, what you</p> <p>11 are certain of is that such a device is used at your current</p> <p>12 facility, and you can't recall whether one was available or</p> <p>13 used at FCI McKean? Is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And as far as the response to notice that there</p> <p>16 were at least concerns about air quality, am I correct that</p> <p>17 no testing was undertaken until OSHA notified you that it</p> <p>18 had received a letter from someone raising concerns about</p> <p>19 the air quality? Is that also correct?</p> <p>20 A. I -- I honestly don't know that, and I don't</p> <p>21 remember. I know the private company coming in that we</p> <p>22 paid, that that's the first I remember doing it. But I</p> <p>23 wasn't over at the factory the whole time. So in-house</p> <p>24 testing is where I'm not sure of. But to pay an outside</p> <p>25 person to come in, that's the first time. That I remember.</p>

8 (Pages 29 to 32)



<p style="text-align: right;">Page 33</p> <p>1 Q. If there was any in-house testing, you're not 2 aware of it, though. Is that correct?</p> <p>3 A. I don't remember.</p> <p>4 Q. Okay. Did the employees have production quotas?</p> <p>5 A. No. We -- we just were a job factory. The job 6 was there, it went through the factory, and it had a due 7 date.</p> <p>8 Q. So there was a schedule by which employees were 9 expected to complete certain tasks or products?</p> <p>10 A. Of course.</p> <p>11 Q. Did you review anything in preparation for your 12 deposition today, Ms. Forsyth?</p> <p>13 A. I tried to review the declarations that I had 14 given prior. Because it was in 2004, a lot of them.</p> <p>15 Q. Did you review any production records or 16 photographs or any other records in preparation for your 17 deposition?</p> <p>18 A. No, I don't have access to those.</p> <p>19 Q. Are you familiar with a product known as Loc-Weld?</p> <p>20 A. Is that the glue?</p> <p>21 Q. Do you remember it as some sort of glue or 22 adhesive?</p> <p>23 A. I don't know. I remember a glue, and I -- I think 24 it was like an Elmer's glue. If that's the one. I don't 25 know.</p>	<p style="text-align: right;">Page 35</p> <p>1 A. I don't recall those -- those things.</p> <p>2 Q. Is it your belief that you had already left the 3 facility by the time the OSHA report or citations were 4 issued?</p> <p>5 A. That's what I'm thinking. I know that -- that 6 there was a verbal that had come in while I was still there, 7 but I don't recall seeing a written report.</p> <p>8 Q. Did you maintain any notes, personal notes or 9 professional notes regarding your involvement with the OSHA 10 inspection?</p> <p>11 A. No.</p> <p>12 Q. Do you recall taking any actions after you spoke 13 with the OSHA representatives, but before they issued their 14 report, findings, or citations?</p> <p>15 A. Specifically, I don't recall.</p> <p>16 Q. Was it your practice to maintain any type of 17 journal or personal notes regarding your activities at 18 UNICOR?</p> <p>19 A. No.</p> <p>20 MR. LANZILLO: Give me one minute, please. 21 (Brief pause.)</p> <p>22 MR. LANZILLO: Ms. Forsyth, thank you very much. 23 Those are all the questions that I have.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 MR. COLVILLE: I have just a couple questions.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. But as far as a glue or adhesive known as -- 2 specifically as Loc-Weld, have you heard that term before?</p> <p>3 A. I've heard that term. Prior to being the factory 4 manager, I was the business manager, so I helped pay bills. 5 Loc-Weld was a term that I heard, and I'm not sure -- I 6 think it's a glue. That's all I can tell you.</p> <p>7 Q. Okay. Do you recall whether -- well, let me back 8 up. You've told us that your recollection of OSHA's 9 comments about air quality was that the quality of the air 10 was quite good. Do you recall whether OSHA raised concerns 11 about any other conditions in the factory or even issued 12 citations?</p> <p>13 A. Yes. They did. Which is sort of normal, I think, 14 for OSHA when they come in. And I can't remember what they 15 were. I remember once that a fire hydrant wasn't accessible 16 and that kind of thing. But that's all I remember about 17 those.</p> <p>18 Q. After you received OSHA's report or citations, did 19 you do anything in response to it?</p> <p>20 A. The -- I can't recall if I saw the actual written 21 report, because I wasn't there. If I did see it, I would 22 have done everything that they had requested, because then I 23 have to respond to the warden as to what we have done to 24 correct things.</p> <p>25 Q. It --</p>	<p style="text-align: right;">Page 36</p> <p>1 2 CROSS-EXAMINATION 3 BY MR. COLVILLE: 4 5 Q. With regard to the MSDS sheets, you were 6 questioned about them being altered. Just a straightforward 7 question. Did you alter the MSDS sheets?</p> <p>8 A. No, sir.</p> <p>9 Q. You also mentioned that when the OSHA inspection 10 did occur, that -- I thought you said that they -- they 11 inspected or reviewed the MSDS sheets that were located -- I 12 think at least in two spots on the factory floor. Is that 13 an accurate statement?</p> <p>14 A. To my knowledge. I can see in my mind where one 15 specifically is, and I'm pretty sure there is one in the 16 back, but I'm not positive. I'm almost positive.</p> <p>17 Q. My question is a little more pointed than that. 18 Did OSHA ever go to the MSDS sheets, wherever they were 19 located, and inspect them?</p> <p>20 A. I recall the man standing at the one in the front 21 looking through it, yes.</p> <p>22 Q. Do you know whether or not when they were looking 23 through it, if they were looking at the MSDS sheet for 24 Micore board or Loc-Weld?</p> <p>25 A. No, I don't know that.</p>

Page 37

1 Q. Okay. Subsequent to OSHA looking at those MSDS  
2 sheets, did they come to you at any time and report any  
3 concern with what they found to be tampering or alteration  
4 of MSDS sheets that they did look at, whether they were for  
5 Micore board or any other?

6 MR. LANZILLO: Objection to form.

7 A. No. Not that I recall.

8 Q. Do you know whether or not FCI McKean was issued a  
9 citation for having altered MSDS sheets as part of the OSHA  
10 investigation?

11 A. Not that I'm aware of.

12 Q. When you walked the factory floor on a daily  
13 basis, did you wear a respirator?

14 A. No, sir.

15 Q. Did any staff members wear a respirator while they  
16 were on the floor?

17 A. Not to my knowledge.

18 MR. COLVILLE: That's all I have. Thank you.

19 MR. LANZILLO: Yeah, just a couple quick  
20 follow-ups.

21

22 REDIRECT EXAMINATION

23 BY MR. LANZILLO:

24

25 Q. Miss Forsyth, you don't know whether OSHA actually

Page 38

1 inspected the MSDS sheets for the Loc-Weld or the Micore  
2 board, do you?

3 A. I don't know that, no.

4 Q. Okay.

5 A. I can't recall.

6 Q. And how often did you actually operate a panel saw  
7 or a router with Micore board on the facility floor?

8 MR. COLVILLE: Object to form.

9 A. Me specifically?

10 Q. Did you ever operate one of those machines with  
11 Micore board, ma'am?

12 A. I did not.

13 Q. And how often would the supervisors or managers on  
14 the floor actually be the operators of the equipment?

15 A. I don't know that.

16 Q. That would certainly not be a regular activity  
17 undertaken by a manager, would it?

18 A. No. These were supervisors, so.

19 MR. LANZILLO: That's all I have. Thank you very  
20 much.

21 MR. COLVILLE: That's all. We'll waive. Thank  
22 you.

23

24 (Deposition concluded at 11:16 a.m.)

25

10 (Pages 37 to 38)

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<p>able 24:7</p> <p>about 5:10,16,19 6:1 12:9,23 13:11 19:2 21:13,16,19 22:1,4,7 23:25 25:23,25 27:13 27:15,18,20,20,21 28:1,1 31:11 32:16 32:18 34:9,11,16 36:6</p> <p>ACA 20:22</p> <p>access 20:14 33:18</p> <p>accessible 34:15</p> <p>accurate 36:13</p> <p>acting 7:4</p> <p>actions 35:12</p> <p>activities 6:16 11:5,10 26:13 35:17</p> <p>activity 38:16</p> <p>actual 34:20</p> <p>actually 12:3,20 15:14 28:4 29:5 37:25 38:6 38:14</p> <p>addition 6:13,15</p> <p>address 4:7 15:3</p> <p>addressed 13:1 20:17</p> <p>adhesive 33:22 34:1</p> <p>advise 6:15</p> <p>after 7:18 22:11,20 34:18 35:12</p> <p>ago 12:23</p> <p>agreed 27:3</p> <p>ahead 6:14</p> <p>ailments 21:17 22:2</p> <p>air 21:9,9,16,19,24,25 22:4,7,12,14,16,22 23:21,24,25 24:3,13 25:6,7,14,21,23 27:25 28:3,11,11,13 30:6,8 31:3,21 32:1,8 32:16,19 34:9,9</p> <p>airing 27:1</p> <p>air-handler 26:24</p> <p>air-handling 15:17,18 15:21 16:1,8 27:13</p> <p>al 1:3,5</p> <p>almost 18:9,14 27:1 36:16</p> <p>alone 13:14,15</p> <p>already 35:2</p> <p>alter 36:7</p> <p>alteration 37:3</p> <p>altered 29:22,23 36:6 37:9</p> <p>altering 29:12</p> <p>amazed 32:4</p> <p>ambient 28:3,11</p> <p>Ann 4:8</p> <p>annual 8:16 13:4,7,16</p>	<p>14:4,12 18:24</p> <p>annually 14:7</p> <p>answer 3:21 24:23 31:23</p> <p>answered 6:16</p> <p>anyone 8:4 12:25 26:11 26:11 27:18 28:5 29:11,16,19</p> <p>anything 9:1 16:10 22:13,21 25:24 27:24 33:11 34:19</p> <p>apologize 6:14</p> <p>approach 8:8</p> <p>approximately 6:25 11:4,9 12:6 14:9 28:21</p> <p>area 11:15,19,19,22 12:2 15:10 18:6 20:8 26:23</p> <p>areas 8:12 11:21 12:1 23:1</p> <p>around 3:19 11:8 23:18 27:22</p> <p>arrived 10:13</p> <p>asked 25:2 27:20 28:25 30:25</p> <p>asking 22:8</p> <p>aspect 10:18</p> <p>assigned 16:4,6</p> <p>assist 12:11</p> <p>Associate 4:15</p> <p>associated 16:14 17:1</p> <p>association 30:3</p> <p>assume 5:2,19 25:9,10</p> <p>assumed 24:14</p> <p>assurance 7:10</p> <p>Attorney 1:11,19</p> <p>AUSA 1:18</p> <p>available 26:1,4 32:12</p> <p>Avenue 1:11</p> <p>aware 16:7,12,16 17:4 17:21 18:3 20:9,20 21:13,24 26:19 29:25 30:7 31:3 33:2 37:11</p> <p>away 10:6</p> <p>a.m 1:11 38:24</p> <p>A330 1:11</p>	<p>30:17,19,20,21,22 34:2 35:13</p> <p>Beginning 23:13</p> <p>being 5:18 9:24 12:1 24:7 25:1 34:3 36:6</p> <p>belief 27:9 35:2</p> <p>believe 5:10 7:2 8:9 9:22 14:5 16:17 18:4 19:12,22 20:6 23:10 25:20 31:5</p> <p>believed 25:11</p> <p>best 8:3 17:3 27:3</p> <p>Beth 7:10</p> <p>better 7:23 22:16,23</p> <p>between 3:17 5:22 28:8</p> <p>Bevevino 17:11,13,14 18:10</p> <p>Bevevino's 17:17,21</p> <p>big 15:17</p> <p>bills 34:4</p> <p>bit 3:17 12:11 17:19,24 17:24 29:4</p> <p>blow 24:3,13 25:15</p> <p>blowing 24:5,20,20</p> <p>blown 24:7</p> <p>board 11:11,14 15:4 16:15 17:2 18:12,13 20:17,18,18,21 21:8 26:24 28:2,9 29:13 29:17 30:4 36:24 37:5 38:2,7,11</p> <p>boards 18:15 29:6,6,8</p> <p>BOP 8:10 14:14</p> <p>BP-9's 16:19</p> <p>breathing 28:3,10</p> <p>Brief 18:16 35:21</p> <p>briefly 7:12</p> <p>bring 8:4</p> <p>brought 8:7 12:25 16:25 19:23</p> <p>Bureau 7:19,24,25</p> <p>business 6:3 7:9 34:4</p>	<p>claim 17:6</p> <p>claims 17:7,10</p> <p>class 14:5</p> <p>clean 23:17,17</p> <p>cleanest 27:22</p> <p>cleanliness 27:21</p> <p>clearly 3:24 4:1</p> <p>close 11:6 20:7</p> <p>clothes 24:14</p> <p>clothing 24:3,8,21</p> <p>colds 18:1</p> <p>Coleman 9:16,17 10:7</p> <p>Colville 1:18 2:5 3:13 24:22 35:25 36:3 37:18 38:8,21</p> <p>Colville's 3:20</p> <p>combining 31:20</p> <p>come 15:14 20:5 29:1 30:9 32:25 34:14 35:6 37:2</p> <p>coming 16:20 22:6 24:12 27:16 30:10 32:21</p> <p>commencing 1:10</p> <p>comments 34:9</p> <p>commonly 5:19</p> <p>Commonwealth 1:10</p> <p>Comp 17:5</p> <p>company 30:9,13 32:21</p> <p>complaining 16:19 21:13,16</p> <p>complaint 21:5,12,20 30:25</p> <p>complaints 16:13,25 21:19,24 22:1,7 29:25 32:2</p> <p>complete 33:9</p> <p>compressed 23:25</p> <p>concern 25:21 27:23 37:3</p> <p>concerned 22:4</p> <p>concerning 22:14 27:25</p> <p>concerns 22:1 32:1,16 32:18 34:10</p> <p>concluded 38:24</p> <p>conditions 30:2 34:11</p> <p>conducted 23:8</p> <p>conducting 3:11</p> <p>Conference 1:9</p> <p>connection 5:24 21:25 23:6 30:7</p> <p>consult 20:11</p> <p>contract 6:2</p> <p>copies 19:18,19</p> <p>correct 8:2,3,11 14:9 15:7 17:15 18:23 27:8,19 32:13,14,16 32:19 33:2 34:24</p> <p>Correctional 4:18</p>	<p>correctly 11:18 16:23 21:10,23 32:10</p> <p>County 9:20,21,24 10:3</p> <p>couple 3:16 15:19 19:14,15 35:25 37:19</p> <p>course 7:3 33:10</p> <p>Court 1:1 3:10</p> <p>crackling 4:17</p> <p>Cross-examination 2:5 36:2</p> <p>current 31:13,15 32:11</p> <p>cut 12:2 28:2 29:3,8</p> <p>cutting 11:10,10,14,19 11:21</p> <p>C.A 1:3,3,4,4,5</p>
	B	C		D
	<p>B 3:1</p> <p>back 18:2 20:7 29:24 31:23 34:7 36:16</p> <p>background 7:13</p> <p>backing 32:7</p> <p>based 27:6</p> <p>basis 14:12 37:13</p> <p>became 18:3 21:23</p> <p>become 16:12 17:21 20:20 21:13 29:25</p> <p>before 1:9 3:16,21</p>	<p>C 1:18</p> <p>came 20:19,25</p> <p>capacity 27:2</p> <p>care 19:13</p> <p>cases 3:12 4:4</p> <p>cause 16:10</p> <p>central 14:22 15:21</p> <p>certain 32:11 33:9</p> <p>certainly 38:16</p> <p>changed 9:12</p> <p>check 22:7</p> <p>checking 12:10</p> <p>chemical 19:23</p> <p>citation 37:9</p> <p>citations 34:12,18 35:3 35:14</p>		<p>D 2:1 3:1</p> <p>daily 12:4,9,12 28:19 37:12</p> <p>danger 25:8</p> <p>dangerous 25:2,5,9</p> <p>Data 19:8 20:4,12,14 20:16 26:19 29:12</p> <p>date 10:7 33:7</p> <p>day 11:6 12:4 24:17 25:3 27:22</p> <p>day-to-day 6:16</p> <p>DC 1:22</p> <p>dealing 20:21</p> <p>Debora 1:9 2:3 4:8</p> <p>debris 15:15</p> <p>December 1:10</p> <p>declaration 29:21</p> <p>declarations 33:13</p> <p>Defendants 1:6,18</p> <p>delay 3:17,19</p> <p>department 8:17 13:5 19:24 20:1 31:5</p> <p>depended 12:8</p> <p>depending 11:7,22</p> <p>deposition 1:9 3:11,23 33:12,17 38:24</p> <p>described 18:25</p> <p>description 8:19,23</p> <p>design 10:17</p> <p>device 23:25 31:13,15 31:18 32:7,11</p> <p>difference 28:17</p> <p>differences 28:8</p> <p>different 12:1 19:6,14 19:16 23:1</p> <p>direct 2:4 3:4 18:4,5</p> <p>directly 7:1 28:2</p> <p>disability 17:5,6,7</p> <p>discreet 11:15</p> <p>discuss 28:5</p> <p>Discussion 18:17</p> <p>District 1:1,1 3:10,10</p> <p>documents 26:20</p>

<p>doing 3:12 10:6 12:8 22:13,18 24:25 25:3 25:20 30:10 32:22</p> <p>done 8:5 32:3 34:22,23</p> <p>double 27:1</p> <p>Doug 3:13</p> <p>Douglas 1:21</p> <p>down 3:14 10:5 12:8 15:14 28:15 29:1</p> <p>due 33:6</p> <p>duly 3:2</p> <p>during 3:23 8:16 10:20 10:25 11:3,6 13:17 15:11 16:22,24 18:24</p> <p>dust 15:14,16 20:17 21:8 23:17 24:3,6,7,9 24:12,14,20 25:15 26:4,6,9,13,17,21 27:7</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p>E 2:1 3:1</p> <p>each 15:13,13 18:21 19:5 28:24</p> <p>earlier 18:25</p> <p>early 6:4,6 10:12</p> <p>economics 9:15</p> <p>educate 19:5,6</p> <p>education 4:15 7:2,11 7:14,17</p> <p>educational 7:12</p> <p>eight-hour 23:11,12</p> <p>either 11:3 26:20 30:1</p> <p>Elmer's 33:24</p> <p>employed 4:12,23,25 5:6,24 6:2 8:25</p> <p>employee 16:25</p> <p>employees 6:23 11:9,14 11:16 13:12,13,14 16:13 17:4 18:11 26:2 29:5 30:1,1 33:4 33:8</p> <p>employment 11:5</p> <p>enclosed 26:23</p> <p>encompass 12:13</p> <p>encompassed 28:20</p> <p>end 24:21</p> <p>engaged 11:4,10,14 29:5</p> <p>English 18:4</p> <p>enough 15:3 25:9</p> <p>entire 12:13 16:22,24</p> <p>equipment 38:14</p> <p>Erie 1:3,3,4,4,5,11,17 3:15</p> <p>Esquire 1:15,18,21</p> <p>et 1:3,5</p> <p>even 3:25 20:18 26:24 27:5,7,21 32:2,5 34:11</p>	<p>ever 15:2 16:12 20:11 23:20 25:2,14 26:9 26:16 29:5,19,25 31:18 36:18 38:10</p> <p>every 19:23</p> <p>everybody 20:15 24:24</p> <p>everything 11:24 15:24 19:1 20:19,23 22:14 34:22</p> <p>exact 10:6</p> <p>exactly 18:3</p> <p>examination 2:4,6 3:4 37:22</p> <p>example 15:3 29:9</p> <p>existing 8:5</p> <p>expected 33:9</p> <p>experienced 30:2</p> <p>expert 11:24 15:23</p> <p>exposure 28:8</p> <p>eyes 25:22</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p>F 3:1</p> <p>face 26:8</p> <p>facility 5:20,25 9:1,4 9:12,13,14,23 10:3,5 10:8,10,18,22 11:5 11:15,20 12:24 15:11 18:6 19:9 22:23 23:9 26:2 27:8,20 28:3,11 28:19,20 30:8 31:4 31:13,16 32:12 35:3 38:7</p> <p>factory 5:13,14,18 6:11 7:8 12:1,19 14:21 15:15 18:8 19:14,16 20:6,25 22:16,17 23:1 27:25 31:21,22 32:2,23 33:5,6 34:3 34:11 36:12 37:12</p> <p>fairly 6:6</p> <p>familiar 14:15 33:19</p> <p>Fantasky 7:10</p> <p>far 18:15 24:12 32:15 34:1</p> <p>FCI 4:8,20,23,24,25 5:3,3,6,13,14,20,23 6:4,9 9:25 10:10,14 13:12 31:18 32:13 37:8</p> <p>February 13:21</p> <p>Federal 1:21 4:18</p> <p>Ferguson 1:9,24,25</p> <p>few 11:12 12:23 30:20</p> <p>filed 16:19</p> <p>findings 35:14</p> <p>fine 22:15 28:15</p> <p>finish 3:18</p> <p>fire 34:15</p> <p>first 1:22 3:1 4:6 10:11</p>	<p>10:13 13:20 17:21 20:24 21:1 32:22,25</p> <p>floor 11:19,25 12:3,6 12:14,19 18:8 19:14 19:16 20:3,6 24:10 28:22,24 29:4 32:6 36:12 37:12,16 38:7 38:14</p> <p>Florida 9:18,21,24 10:3 10:8</p> <p>focusing 7:3</p> <p>following 11:18 21:22</p> <p>follows 3:2</p> <p>follow-ups 37:20</p> <p>force 25:7</p> <p>foreman 17:16</p> <p>foremen 18:8,21,23 19:13</p> <p>form 24:22 37:6 38:8</p> <p>formal 7:17</p> <p>Forsyth 1:9 2:3 3:7 4:8 7:12 18:20 33:12 35:22 37:25</p> <p>found 37:3</p> <p>four 7:2</p> <p>frame 11:1</p> <p>from 5:1,3 7:15 8:4,7,9 8:10 9:12 11:16,25 12:21,25 13:5 14:14 14:14 16:17 19:17 23:3,13 25:15 29:19 29:25 30:24 32:18</p> <p>front 36:20</p> <p>full 4:6</p> <p>full-time 4:13</p> <p>furniture 9:2,8,9,13,23 10:2,6</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p>gave 4:16</p> <p>general 15:6</p> <p>generally 8:15 9:5 28:11</p> <p>gentleman 22:15,24 23:2,3</p> <p>Georgia 3:15 4:9,10</p> <p>getting 24:18</p> <p>give 7:20 8:17 31:1 35:20</p> <p>given 11:3 19:4 33:14</p> <p>glue 33:20,21,23,24 34:1,6</p> <p>go 6:14 11:22 15:16,17 19:24 36:18</p> <p>goes 3:19</p> <p>going 12:20 25:10 28:24</p> <p>Goldring 1:21</p> <p>Goldring's 3:19</p> <p>good 34:10</p>	<p>Gornall 1:16</p> <p>graduate 7:15</p> <p>graduation 7:18</p> <p>Grant 1:19</p> <p>great 25:23 27:1</p> <p>guess 13:20 25:25 31:22</p> <p>guessing 11:12,13 30:20</p> <p>guidelines 15:6</p> <p>gun 23:22,24 24:3,13 25:15,22,24</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p>H 3:1</p> <p>half 5:10 12:10,12 28:21,23</p> <p>hand 20:1</p> <p>handling 16:14</p> <p>happened 22:20</p> <p>happy 3:24 4:2</p> <p>harm 27:21</p> <p>having 3:1 17:9 37:9</p> <p>Hayes 7:9 29:1</p> <p>head 15:8</p> <p>health 8:12 13:2 14:13 22:2</p> <p>hear 3:18,24 4:1</p> <p>heard 16:17 29:19 34:2 34:3,5</p> <p>held 18:17</p> <p>helped 34:4</p> <p>hesitating 31:19</p> <p>high 7:14,15,18</p> <p>Hill 1:3 3:8,9</p> <p>Holdnack 1:25</p> <p>honestly 32:20</p> <p>hookup 3:13,13,20,20</p> <p>Houlihan 7:9 16:18</p> <p>hour 12:10,12 28:21,23</p> <p>hours 10:21 14:6,9</p> <p>house-hunting 22:19</p> <p>Housler 14:3 27:15 31:23</p> <p>Housler's 14:8</p> <p>huge 26:25</p> <p>hurt 25:22</p> <p>hydrant 34:15</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p>identity 27:10</p> <p>imagine 24:6</p> <p>immediate 6:19</p> <p>immediately 32:3</p> <p>imply 24:24</p> <p>important 31:22</p> <p>Inc 1:25</p> <p>include 7:2 13:13,14</p> <p>included 17:17</p> <p>indicating 19:16</p>	<p>individual's 17:12</p> <p>industries 1:21 4:15 5:8 6:9 7:4 8:20 9:1 10:21 15:12</p> <p>information 4:4</p> <p>initial 10:14</p> <p>inmate 13:14 16:25 18:11 21:16,20 24:25 30:1</p> <p>inmates 11:4 16:13,19 17:16 18:19 19:2,5 21:13,15 22:4 23:14 23:16 25:14 26:9,16 27:7 28:1,24 29:8</p> <p>inserting 29:16</p> <p>inside 22:16,23</p> <p>inspect 36:19</p> <p>inspected 36:11 38:1</p> <p>inspection 23:5,6,8 30:7 35:10 36:9</p> <p>inspections 20:22</p> <p>instances 16:7</p> <p>institution 4:19 6:3 19:24</p> <p>institutional 16:5</p> <p>instructed 26:17</p> <p>instructions 4:5</p> <p>interested 26:12</p> <p>interim 16:20</p> <p>interruption 18:16</p> <p>investigate 31:1</p> <p>investigation 37:10</p> <p>involve 29:2</p> <p>involved 10:17</p> <p>involvement 35:9</p> <p>involving 11:11</p> <p>in-house 7:22 8:18 13:2 13:6 32:23 33:1</p> <p>irritations 30:2</p> <p>issue 21:17 22:5,13</p> <p>issued 32:3 34:11 35:4 35:13 37:8</p> <p>issues 17:9 18:14 22:12</p> <p>ivy 17:25</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p>J 1:5</p> <p>Janis 1:9,24</p> <p>January 13:21</p> <p>Jesup 4:8,9,10,20,21,23 5:3</p> <p>job 6:7 7:20 8:19,23 33:5,5</p> <p>JOHN 1:5</p> <p>journal 35:17</p> <p>July 5:1</p> <p>June 4:11 5:1,23</p> <p>just 3:24 11:25 12:2,9 13:4,15 15:24 21:22 25:24 26:7 27:4,16</p>
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27:24 28:3,10 31:23 32:1,3,7 33:5 35:25 36:6 37:19 <b>J-E-S-U-P 4:22</b>	<b>letter</b> 21:4 30:24 32:18 <b>let's</b> 18:18 <b>levels</b> 28:8 <b>like</b> 6:6 23:10 33:24 <b>little</b> 3:17 4:17 31:5 36:17 <b>located</b> 4:19 12:18 19:14,15 36:11,19 <b>location</b> 3:14 14:22 <b>locations</b> 20:9 <b>Loc-Weld</b> 33:19 34:2,5 36:24 38:1 <b>long</b> 4:10,25 5:9,14 10:2 14:4 17:25,25 30:21 <b>look</b> 15:20 29:1 37:4 <b>looking</b> 29:3,24 36:21 36:22,23 37:1 <b>lot</b> 19:3 32:6 33:14	<b>maybe</b> 29:1 <b>ma'am</b> 38:11 <b>McKean</b> 4:24,25 5:3,7 5:13,15,20,23 6:4,9 9:25 10:10,14 13:12 31:18 32:13 37:8 <b>McLaughlin</b> 1:16 <b>mean</b> 13:10 21:23 25:4 26:12 <b>medical</b> 17:5 <b>members</b> 8:6 37:15 <b>memory</b> 11:6 30:21,21 <b>mentioned</b> 13:23 36:9 <b>Michael</b> 1:3,18 3:8 7:9 16:2 <b>Micore</b> 11:11,14 15:3 16:14 17:2 18:12,13 20:17,18,21 21:8 28:2,9 29:6,13,17 30:3 36:24 37:5 38:1 38:7,11 <b>middle</b> 6:5 <b>might</b> 17:8 28:8 <b>mind</b> 3:16 36:14 <b>minute</b> 35:20 <b>Miss</b> 37:25 <b>misspoke</b> 10:9 <b>mistaken</b> 13:21 <b>moment</b> 3:21 <b>moments</b> 12:23 <b>month</b> 19:5 <b>monthly</b> 18:15 <b>months</b> 6:2 30:20 <b>more</b> 12:11 15:6,18 26:12 31:10 36:17 <b>most</b> 23:14 <b>moved</b> 9:15 19:17 <b>moving</b> 22:19 <b>MSDS</b> 19:11 20:19,20 29:22,23 36:5,7,11 36:18,23 37:1,4,9 38:1 <b>much</b> 12:6 35:22 38:20 <b>multiple</b> 19:18,19 <b>Myron</b> 3:8	<b>next</b> 6:18 <b>night</b> 10:24 11:8 <b>nods</b> 15:8 <b>normal</b> 12:11 14:25 34:13 <b>Notary</b> 1:9 <b>notes</b> 35:8,8,9,17 <b>notice</b> 21:11 28:17 32:15 <b>notified</b> 32:17 <b>November</b> 5:11,12 <b>NW</b> 1:22	<b>original</b> 4:16 <b>OSHA</b> 20:24 21:1,6,12 21:12,18 22:6,11,14 22:24 23:3,3,5 27:2 27:16,18,20 28:5 30:7,10,18,24 31:3 32:17 34:10,14 35:3 35:9,13 36:9,18 37:1 37:9,25 <b>OSHA's</b> 34:8,18 <b>other</b> 7:25 9:1 11:15,16 14:11,12,15 15:11 16:17 17:5 20:9 23:16 25:18 26:20 28:18,19 30:2,6,8 31:2,3 33:16 34:11 37:5 <b>out</b> 11:20,25 12:10 17:23,24 29:16 <b>outside</b> 8:1,4,8,9,12,18 12:24,25 14:14 15:17 15:24 22:17,23 23:2 32:24 <b>over</b> 26:8 31:20 32:23 <b>overlooking</b> 12:19
<b>K</b>	<b>M</b>	<b>N</b>	<b>O</b>	<b>P</b>
<b>keep</b> 3:16 11:8 <b>Kelly</b> 3:8 <b>Kenny</b> 3:9 <b>Kevin</b> 3:8 <b>kind</b> 15:19 34:16 <b>knew</b> 15:24 21:17 27:16 <b>know</b> 3:24 4:2 9:4,7,12 10:2,7,12 17:8,9,19 17:23 18:6,13,14 19:7,20,23 20:22 21:3,4,15,19,21 22:9 23:8,11,13,19 24:17 25:9,14,17,24 26:7 27:6 28:12 29:10 31:7,20,20 32:4,5,20 32:21 33:23,25 35:5 36:22,25 37:8,25 38:3,15 <b>knowledge</b> 8:24 15:23 17:3 26:4,5,16 28:12 28:18 29:11,15,23 36:14 37:17 <b>known</b> 5:19 22:6 33:19 34:1 <b>Knox</b> 1:16	<b>machine</b> 11:22 15:13 15:15 23:17,18 28:9 28:24 31:6,10 <b>machines</b> 15:21 28:13 28:14,16 29:7 38:10 <b>made</b> 16:16 22:6,6,22 26:1 <b>maintain</b> 35:8,16 <b>maintained</b> 14:22 19:8 20:4 <b>maintaining</b> 15:25 19:11,20 <b>maintenance</b> 16:2,5 19:13 20:1 <b>majority</b> 10:23 <b>make</b> 3:22 9:1 20:23 21:22 <b>making</b> 9:7,9,10 21:20 <b>malfunction</b> 16:11 <b>malfunctioned</b> 16:8 <b>man</b> 36:20 <b>manager</b> 5:13,14,18 7:8,9,10 17:14 34:4,4 38:17 <b>managers</b> 7:1,6 38:13 <b>manufacturing</b> 9:13,23 10:3 <b>many</b> 6:25 10:25 11:4,9 29:8 <b>Marty</b> 7:8 <b>mask</b> 26:6 29:17 <b>masks</b> 26:4,7,9,13,17 26:21 27:7 <b>material</b> 19:8 20:3,11 20:14,16 26:19,22 29:12 <b>materials</b> 19:5 <b>matters</b> 3:9 <b>may</b> 3:20	<b>N 2:1</b> <b>name</b> 3:7 4:6,18 9:22 10:7 13:24 17:12 30:13 <b>names</b> 7:5 26:12 <b>near</b> 20:5 28:14 <b>necessarily</b> 26:12 <b>necessary</b> 23:15 27:2 <b>need</b> 22:17,21 <b>needed</b> 27:2 <b>never</b> 25:16,24 29:22 29:22 32:1,5 <b>new</b> 12:10	<b>object</b> 24:22 38:8 <b>Objection</b> 37:6 <b>observe</b> 12:20 23:20,21 24:7,13 29:5 <b>observed</b> 23:21 24:2 28:18 <b>occasion</b> 24:25 28:25 <b>occasions</b> 15:19 <b>occupational</b> 8:12 <b>occupied</b> 6:8 <b>occupy</b> 5:9 <b>occur</b> 13:16 28:8 36:10 <b>occurred</b> 14:12 29:20 30:17 <b>off</b> 18:17 23:22 24:3,8 24:12,14,20 <b>office</b> 1:19 6:3 12:16,21 13:23 14:8 20:6 <b>offices</b> 1:11 <b>often</b> 12:3 14:24 24:16 38:6,13 <b>Okay</b> 6:7,18 8:19 10:10 11:23 13:7 14:1 24:7 24:19 25:7,11 31:25 33:4 34:7 37:1 38:4 <b>once</b> 13:8 24:17 25:3 34:15 <b>one</b> 9:24 11:18,19,21 11:21 12:2 16:16 17:10 19:25 20:5,7 22:15,25 23:11 25:3 31:23 32:12 33:24 35:20 36:14,15,20 38:10 <b>open</b> 10:11 <b>opened</b> 10:5 <b>operate</b> 38:6,10 <b>operated</b> 9:25 10:25 <b>operating</b> 9:5,5 <b>operation</b> 6:11 10:13 10:16,22 23:9 <b>operations</b> 28:4 <b>operator</b> 28:9 <b>operators</b> 38:14 <b>opposed</b> 28:10	<b>PA</b> 1:17,20 <b>packing</b> 20:8 <b>paid</b> 32:22 <b>panel</b> 15:10 29:9 38:6 <b>Pardon</b> 31:14 <b>Park</b> 1:11 <b>part</b> 10:1 13:20 21:11 22:3 24:19 31:9 37:9 <b>participate</b> 23:5 <b>particle</b> 20:18 26:24 <b>particular</b> 13:11,16 14:1,5 16:18 26:11 26:22 27:11 <b>particularly</b> 28:10 <b>pause</b> 3:21 35:21 <b>pay</b> 32:24 34:4 <b>PC</b> 1:16 <b>pending</b> 3:9 <b>Pennsylvania</b> 1:1,10,12 3:11,15 <b>people</b> 8:7 22:1,5,9 28:5 30:3 <b>performed</b> 30:8,14,23 31:2,3 <b>performing</b> 26:13 27:8 <b>period</b> 5:22 10:20 15:12 <b>periodically</b> 23:16 <b>periods</b> 28:22 <b>person</b> 16:5 27:10 32:25 <b>personal</b> 35:8,17 <b>personally</b> 20:11 22:20

<p>photographs 33:16  pick 18:15  Pittsburgh 1:20  place 14:20 18:3 27:23  places 19:14,16  Plaintiff 1:3  Plaintiffs 1:15  plant 9:16,17  plants 31:21  plastic 9:10,13  please 4:6 35:20  pneumatic 23:25  pneumonia 18:1  point 22:15 28:4  pointed 36:17  poison 17:25  policies 15:6  policy 14:20 31:9  polluted 15:15  position 4:14 5:9,11,12  6:8 8:23 10:14  positive 13:22 17:8,9  19:12 20:2,23 23:2  30:22 36:16,16  Possibly 26:23  potential 27:21  practice 35:16  precisely 4:18 30:16  preparation 33:11,16  present 12:5 23:4  presently 4:12,19  pressure 25:6  pretty 36:15  prior 4:23 5:12 30:10  33:14 34:3  prison 1:21 8:1,5  Prisons 7:19,24,25  private 30:9 32:21  probably 5:16 11:7  24:17 25:3  problems 16:14 17:1,6  17:17,18,20,22 18:2  21:14 32:5  procedures 14:20  proceedings 18:16  process 29:6  product 12:10 28:25  33:19  production 33:4,15  products 9:10,13 10:6  33:9  professional 4:6 35:9  program 8:1 14:15,17  14:19,24,25 15:2  programs 7:21  promotion 5:4  prompted 21:3,6  provided 7:22 8:11  13:2 14:1,8 18:19  26:6</p>	<p>providing 18:20  proximity 28:4  Public 1:10  Purely 9:15  put 26:8</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p>quality 7:10 21:9,16,19  21:24,25 22:4,8,12  22:14,16,23 28:13  31:21 32:2,8,16,19  34:9,9  question 3:21,22,25 4:1  6:18 36:7,17  questioned 36:6  questions 7:3 13:1 22:8  35:23,25  quick 37:19  quite 17:19,23,24 29:2  29:4 30:19 34:10  quotas 33:4</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p>R 3:1,1  raised 22:12 34:10  raising 22:1 32:18  rare 26:15  rather 28:2  react 22:18  readers 22:25  reading 27:13  ready 24:18  real 18:9 31:22,24  really 5:16 12:8 16:9  21:19 22:17  reason 23:22  recall 7:5 10:4 16:11  21:1,5 22:13 27:10  27:12 29:21 30:13,16  30:17 32:12 34:7,10  34:20 35:1,7,12,15  36:20 37:7 38:5  receive 8:15 14:12,24  16:12 18:11  received 7:20 8:9 12:24  13:5 18:14,24 22:7  30:25 32:18 34:18  receiving 21:11  Recognizing 30:16  recollect 8:3  recollection 34:8  record 18:17  records 33:15,16  Redirect 2:6 37:22  referred 5:18 23:24  referring 24:4  refresher 8:16  regard 36:5  regarding 13:2 14:13  15:9 16:13 17:1</p>	<p>18:12 22:11 28:7  29:11,17 30:1 35:9  35:17  regular 13:13 38:16  related 17:6  relating 29:12  relative 3:12 4:4 23:9  remain 8:22  remember 5:16 10:4  17:23 19:22 20:5,10  21:10,17 22:10,10,24  23:23 24:11 25:21,23  27:3,12 29:24 30:12  31:19 32:21,22,25  33:3,21,23 34:14,15  34:16  remote 3:14  repeat 3:25  rephrase 3:25 4:2  report 22:14 31:1  34:18,21 35:3,7,14  37:2  Reported 1:24  Reporting 1:25  represent 3:8  representatives 35:13  requested 34:22  require 26:25  required 26:20  respirator 29:16 37:13  37:15  respirators 26:1,5,21  27:7  respiratory 16:14 17:1  17:6,8,18,20,22  21:14 22:2  respond 34:23  response 4:16 21:7  30:24 32:15 34:19  responsibilities 6:7  responsible 6:10,15  15:25 18:19,21 19:11  19:20,25  rest 8:10 15:17  resume 18:18  review 33:11,13,15  reviewed 36:11  Rich 3:7  Richard 1:15  right 5:22 10:5 18:18  20:5 24:2,21 29:2  Robin 17:13,14  room 26:25  rotated 18:9  router 38:7  routine 24:19  routing 29:7  RPR 1:24</p> <hr/> <p style="text-align: center;"><b>S</b></p>	<p>S 3:1  safety 8:13,16 13:3,5  13:23 14:7,13 18:14  18:18,22 19:8,12,24  20:3,12,14,16 26:19  26:20 29:12 31:5  Salerno 16:2 22:25  23:3 25:6 27:14  same 8:22 9:24 21:13  Sapko 7:8 16:17 18:5  saw 23:17 28:10 29:9  34:20 38:6  sawing 29:6  saws 15:10,11 23:16,16  25:15 28:2,5  schedule 33:8  school 7:14,15,18  screwdrivers 15:19  second 32:7  see 24:16,25 26:9,15  31:18 34:21 36:14  seeing 23:23 24:11  26:25 28:25 35:7  seen 25:2 27:23 29:22  self-taught 19:3  seminar 8:1  send 7:25  Sennett 1:16  separate 11:16  serves 11:6  session 13:8  sessions 14:11 18:24  set 28:14  setting 10:15  sheet 20:16 29:22,23  36:23  sheets 19:8 20:4,12,14  26:19 29:12 36:5,7  36:11,18 37:2,4,9  38:1  shift 11:3 23:13 24:21  shifts 10:25  shop 11:19,21 12:3,6  12:14 20:3 28:22,23  29:3  show 19:4  sick 17:19  Siggers 3:8  significant 28:22  silica 20:17  silos 15:17  similar 31:18  simply 4:3  Since 4:11  sir 5:5 6:1,20,22 7:24  9:11 10:19 12:15,17  15:5,8,13 36:8 37:14  sitting 27:5  skin 30:1,2  Snyder 19:25</p>	<p>some 4:3 18:1 23:25  33:21  someone 14:3 28:10  32:18  something 16:20 19:6  24:5,18 25:23 29:1,3  sometime 12:9  sometimes 12:4,11  soon 30:17  sorry 9:20  sort 23:25 33:21 34:13  source 14:14  South 1:11 4:9  space 27:14  speaking 3:18  specialist 6:2  specific 15:2 21:16  22:4,5,9 28:18 31:10  specifically 8:14 16:4,6  16:16 18:13 22:9  25:19 26:14 27:12,16  27:24 29:6,15 30:12  34:2 35:15 36:15  38:9  specifics 21:21  spend 12:6 28:21  spoke 35:12  spots 36:12  spraying 23:22  spread 11:20  staff 8:5 13:9,10,12,13  13:15 14:3 16:13,17  16:25 17:4,7,10  21:20 30:1 37:15  standing 36:20  start 3:21  started 3:17 5:23 10:5  22:8  state 4:6  statement 22:22 36:13  statements 14:15,19,24  14:25 15:2  States 1:1,11,19 3:10  static 4:17  stating 29:21 30:24  station 20:7  Steve 14:3,8  still 7:3 9:4,7 35:6  stop 9:5  straightforward 36:6  Street 1:16,19,22 4:9  striking 29:16  strong 15:18  subject 21:5  submitting 17:4  Subsequent 37:1  suck 15:14  sucked 15:20,24  suggested 26:20  Suite 1:11,19</p>
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------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>superintendent 5:8 6:8 7:4,7 8:20,25 10:21 15:12 16:23,24 26:3 supervise 6:23 supervised 7:1,6 supervision 6:10 supervisor 6:19 7:11 16:3 17:14 18:4,5 supervisors 7:5 38:13 38:18 supplies 19:3 supposed 29:22 sure 3:22 9:15 11:13 14:25 18:2,9 19:21 20:23 21:4,22 22:20 24:11 31:24 32:24 34:5 36:15 sweep 24:10 sworn 3:2 system 8:1,5 15:10,17 15:18,22 16:1,1,8,8 26:24 27:1,14</p> <hr/> <p><b>T</b></p> <p>T 3:1 table 23:16 take 12:9 taken 1:9 taking 35:12 talk 19:2 25:23 talked 12:23 27:15 talking 5:19 13:11 23:24 28:24 31:11 talks 18:22 tampering 37:3 tasks 27:8 33:9 teach 8:8 teamwork 8:8 tell 7:5 15:9 26:14 28:15 34:6 telling 16:18 tells 30:21 tenure 6:4 term 7:23 34:2,3,5 test 23:10,11,12 30:8 30:14 31:6 testified 3:2 testimony 2:3 16:23 21:23 27:4,5 32:10 testing 23:1,6 28:13 30:6,10,10,18,23 31:2,2,15 32:3,8,17 32:24 33:1 tests 23:11 31:3 thank 35:22,24 37:18 38:19,21 their 16:2 18:24 22:6 24:8,14,19,21 27:21 30:10 35:13 themselves 23:22 24:3</p>	<p>24:8,12 25:15,22 thing 15:19 34:16 things 3:16 9:15 10:15 12:1 17:25 19:7 22:9 28:15,18 34:24 35:1 think 3:19 11:13 13:4 13:21 16:10 17:17 20:1,19 21:4,15 22:20 26:24 27:14 28:6 33:23 34:6,13 36:12 thinking 17:10 23:11 23:12 30:19 35:5 though 28:1 33:2 thought 25:25 29:1 32:4 36:10 three 5:10 three-way 3:13 through 7:24 15:16 19:24 25:18 28:19 33:6 36:21,23 throughout 8:22 11:20 11:22 28:24 tied 15:21 Tim 7:9 time 3:18,18,23 5:22 8:22 9:24 10:1,20,23 10:25 11:3 12:6 13:17 15:12 16:22,24 18:1 19:17,17 20:24 21:13 22:18 23:4 28:22 29:8 32:23,25 35:3 37:2 times 8:7 12:5 24:9 title 5:6 today 3:11 27:5,6 33:12 told 25:1,5 27:1,11 34:8 tools 15:20 topics 19:2 total 6:10 train 8:5 training 7:17,19,20,22 8:8,12,15,16,17 12:24 13:2,5,7,11,16 14:2,4,7,11,13 18:11 18:14,18,19,24,24 transfer 5:3 transferred 5:2 transmission 4:17 trick 4:3 tried 11:8 33:13 trip 22:19 trying 16:9 tube 15:13 twice 12:4 two 5:17 6:1 11:2 14:5 14:9 15:1 31:21 36:12</p>	<p>two-hour 14:11 type 17:5 26:6 35:16</p> <hr/> <p><b>U</b></p> <p>uh-huh 9:22 understand 3:14 4:1 16:23 21:25 27:4 28:20 32:10 understanding 15:9 27:17,19,19 28:7 undertaken 30:6 32:17 38:17 UNICOR 1:21 5:20,24 8:20 9:1 10:10,22 11:5 12:24 15:11 16:4,6 18:6 19:9 26:2 26:22 27:8 30:8 31:4 35:18 United 1:1,11,19 3:9 unnecessary 27:6 until 10:23 32:17 updated 15:1 Upstairs 12:19 use 15:3,11 17:1 18:12 29:12,17 used 25:14 32:11,13 using 23:21 24:2,13 25:21 26:21 28:2 utilizing 23:16</p> <hr/> <p><b>V</b></p> <p>v 1:4 various 7:21 8:7,17 10:6 17:24 19:1 28:14 ventilation 15:10 16:1 16:8 verbal 35:6 very 11:12 35:22 38:19 video 1:9 3:12,13 videotapes 19:4 visit 21:1,3,6,12 22:11</p> <hr/> <p><b>W</b></p> <p>W 1:3 waive 38:21 walk 12:12,13 28:19 walked 37:12 walking 11:25 27:22 28:16 walks 12:9 want 3:20 4:3 21:22 24:24 31:6 Ward 3:9 warden 4:15 6:16,18 6:21 34:23 Washington 1:22 wasn't 10:15 15:15 18:4 27:2 29:2 32:23 34:15,21</p>	<p>watching 28:16 29:2 way 3:19 wear 26:17 27:7 37:13 37:15 wearing 26:9,21 Wednesday 1:10 well 3:20 9:5 12:8 19:23 32:7 34:7 went 33:6 were 4:23,25 5:6,14,24 6:7 7:2,4 8:11,17,25 9:15 10:15,17,20,21 10:25 11:6 12:1,1,3 12:10 15:12,21 16:19 16:22,24 18:5,8,21 19:2,3,4,4,7,8,13,15 19:17,17,19 20:3 21:13,24 22:1,3,6,12 23:1 24:5,7,9,18,20 25:1,3,4,20 26:1,2,4 26:7,13,16,25 28:2,4 28:15 32:2,5,16 33:5 33:8 34:15 35:3 36:5 36:11,18,22,23 37:4 37:16 38:18 West 1:16 Western 1:1 3:10 We'll 38:21 we're 3:11,12 5:19 while 5:6 6:8 8:25 26:2 30:3,3 35:6 37:15 white 26:7 whole 3:22 28:20 32:23 Witness 15:8 35:24 witnessed 25:16 word 29:16,17 words 7:25 11:16 work 4:8 13:12 worked 15:10 18:7,8 Workers 17:5 working 15:3 23:14 28:9 30:3 workload 11:7 written 8:19 30:25 34:20 35:7</p> <hr/> <p><b>X</b></p> <p>X 2:1</p> <hr/> <p><b>Y</b></p> <p>Y 3:1 yeah 8:3 37:19 year 6:1,1 13:8,17,20 15:1 30:20 yearly 13:4 18:9 years 5:10,17 15:1</p> <hr/> <p><b>0</b></p> <p>03-323 1:3 03-355 1:4</p>	<p>03-368 1:4 04-011 1:5 05-160 1:3</p> <hr/> <p><b>1</b></p> <p>10 11:13 10th 1:16 10:08 1:11 100 11:8 11:00 10:24 11:16 38:24 120 1:16 15219 1:20 160 11:7 16501 1:12,17 17 1:11 1974 7:16 1989 5:1,23 1999 5:11,12</p> <hr/> <p><b>2</b></p> <p>200 11:7,7 2003 4:11 5:1,23 2004 33:14 2006 1:10 20534 1:22 2600 4:9</p> <hr/> <p><b>3</b></p> <p>3 2:4 301 4:9 36 2:5 37 2:6</p> <hr/> <p><b>4</b></p> <p>4:00 23:13 400 1:22 4000 1:19</p> <hr/> <p><b>5</b></p> <p>50 31:20</p> <hr/> <p><b>6</b></p> <p>6 1:10</p> <hr/> <p><b>7</b></p> <p>7:10 10:23 7:30 10:23 23:13 700 1:19</p> <hr/> <p><b>8</b></p> <p>89 10:12</p> <hr/> <p><b>9</b></p> <p>90 10:12 91 6:6 92 6:6</p>
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